

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6687 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MB AHALPARA

Versus

UNION OF INDIA, SECRETARY INDIAN SYSTEM OF MEDICINE

Appearance:

1. Special Civil Application No. 6687 of 2001
MR NIKHIL JOSHI for Petitioner No. 1-4
MR YATIN SONI for Respondent No. 1
MR PK JANI for Respondent No. 2
SERVED BY RPAD - (N) for Respondent No. 3
DELETED for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 07/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

1. The petitioners challenge the communication dated 25th July 2001 by which the North Gujarat University respondent No.2 had forwarded the name of one Dr.Pinakin Trivedi to represent the North Gujarat University in the Central Council of Homeopathy under Section 3 of the Homeopathy Central Council Act, 1978.

2. It was contended on behalf of the petitioners that forwarding of the name of Dr.Pinakin Trivedi was violative of the provisions of the said act and the Rules framed by the Central Council of Homeopathy. The learned counsel also argued that the subject of sending name of Dr.Pinakin Trivedi was not on the agenda and despite this, contrary to the rules and procedure, his name was forwarded.

3. There is no dispute about the fact that a communication was addressed by the Registrar of the University on 25th July 2001, as per Annexure "C" to the petition, to the Council of Homeopathy, stating that the Board of Studies of Homeopathy had unanimously elected Dr.Pinakin N. Trivedi of Homeopathic College, Mehsana, to represent the University in the C.C.H. as required under Section 3(1)(b) of the Homeopathy Central Council Act, 1973. We cannot at this stage go behind the question as to how the meeting in which such unanimous decision was taken came to be conducted. There is no reason to doubt the official communication sent by the Registrar stating that Dr.Pinakin N. Trivedi was unanimously elected by the Board of Studies. Moreover, the petitioners have not impleaded Dr.Pinakin Trivedi as a party to this petition and no relief could have been granted against Dr.Pinakin Trivedi, even if any acceptable contention had been raised.

4. The petitioners have challenged the action of the respondent No.2 - University of dissolving the Board of Studies on 30th March 2001 and removing the petitioners as members of the Board. It was argued by the learned counsel that the action of removing the petitioners was violative of the provision of Section 77 of the North Gujarat University Act, 1986, and that, it should be directed that they be continued as the members of the Board of Studies, holding that the dissolution of the Board was illegal. No orders of the dissolution of the Board as such are placed on record. Our attention was

invited to an order dated 30th March 2001, a copy of which is at Annexure "F" to the petition, addressed to the petitioner No.1 stating that his appointment to the Board was cancelled for administrative reasons. However, the simultaneously issued order dated 30th March 2001, re-appointing the petitioner No.1, is also on record, at Annexure "A" to the petition. It appears that the order of removal was made on some technical ground so as to issue a fresh order. In any event, it is pointed out by the learned counsel for the respondent University that the petitioner No.1 has already retired from service on 6th August 2002 and therefore, he would not be eligible to be appointed to the Board of Studies anymore.

5. From the provisions of Section 77 of the said Act, it is clear that if any of the petitioners were aggrieved against the order removing them from the Board of Studies, they could have raised a dispute which would have been referred to the State Government as per the provisions of Section 77(2). Admittedly, the petitioners did not raise any such dispute and therefore, having not taken recourse to the statutory remedy available to them, they cannot raise issues which will involve disputed questions of fact for examination by this Court. It is stated that the appointment to the Board of Studies is an honourary appointment. When the University has removed the names of the members of the Board purely on administrative grounds and not by way of any punishment and when such orders were not challenged under Section 77 of the said Act, it will not be appropriate for this Court to go behind the validity of those orders at this distant point of time when the life of the Board of Studies itself was three years.

The petition is, therefore, summarily rejected.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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